



QUEENSLAND HEALTH PAYROLL SYSTEM
COMMISSION OF INQUIRY

Statement of John Beeston

<i>Name of Witness</i>	John Beeston
<i>Date of Birth</i>	23 March 1949
<i>Address and contact details</i>	Known to the Commission
<i>Occupation</i>	Project & Procurement Consultant
<i>Officer taking statement</i>	Jonathan Horton and Elizabeth Kenny
<i>Date taken</i>	8 / 3 / 2013

I, JOHN BEESTON state:

Involvement in relevant events

1. I was engaged by CorpTech on or about 27 October 2007 as a contractor. I initially contracted through Arena Consulting. I had no particular association with Arena. Mr Peter Bartlett who worked for Arena had known me for a long time and considered I held the right experience and temperament to undertake a role at CorpTech. Mr Bartlett proposed me to Ms Barbara Perrott, Executive Director, CorpTech for the role of Director Strategic Program Office (SPO) supporting the Shared Services program that CorpTech was then undertaking. I was engaged in the role and reported to Ms Perrott.
2. My engagement continued until late March 2009.
3. I was subsequently re-engaged by CorpTech from 26 June 2010 until 8 October 2010 as Acting Director, Procurement reporting to Mr James Brown, Executive Director, Strategy & Planning, CorpTech, during which time I contracted with the State via my own company, Hicom Consulting Pty Ltd.

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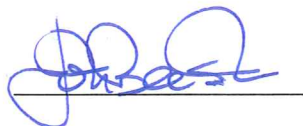
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4. I had no involvement with the tender process which led to the December 2007 Contract between IBM Australia and the State of Queensland.
5. I had some significant level of involvement in the negotiations for that contract.
6. My role at CorpTech included, inter alia, responsibility for management of that contract. My involvement with the contract ceased in late March 2009 until I was re-engaged in June 2010.
7. My involvement with the contract resumed before the parties commenced negotiations for settlement that was reached between IBM and the State in late 2010.

Tender

8. My earliest involvement was in early October 2007 prior to my formal commencement at CorpTech when I was asked to attend a meeting with Mallesons Lawyers. At that meeting, there was discussion about the delivery of the tender responses which were at that time expected.
9. I recall only one material event occurring at that meeting. It became apparent that the tender had been issued without a draft contract. This is not usual procurement practice because it is difficult for a vender to accurately determine its pricing unless it clearly understands the scope of its contractual risks. I asked John Swinson (a partner of Mallesons) why GITC wasn't being used. Mr Swinson's response was that GITC had a number of inconsistencies in it and that the parties would negotiate the contract terms. I responded by posing the question whether he thought the parties could negotiate new contract terms without inconsistencies faster than fixing up those in GITC. Whilst I do not recall his exact reply the essence was "yes".
10. I then went on holidays and returned to commence work at CorpTech only after the evaluation process had been substantially or fully completed.

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Contract negotiation

11. Upon the decision to select IBM as the preferred vendor, the parties commenced a series of negotiations coordinated by Mallesons with meetings principally conducted at its premises.
12. The State's lead negotiator was Mr Terry Burns who, as Delivery Director and head of the Solution Design Authority, also reported to Ms Perrott.
13. My team had responsibility to coordinate the State's input to the agreement.
14. During the process of negotiation it became apparent to me that the process was very confusing, laborious and slow with little evidence of substantive progress being made.
15. At a later meeting in about mid November 2007 (which Mr Swinson, Mr Burns and Mr Malcolm Campbell, a member of my team heading the Vendor Management area, also attended), I advised Mr Swinson that, as neither party had any idea of the form of contract they were trying to negotiate I was going to terminate the coordination process run by Mallesons which my team would take over and that we would suspend negotiations until Mallesons could clearly set out the structure of the contract the parties were trying to create.
16. We (the same people) met again about two days later. Mr Swinson advised that he took his legal instructions from Mr Keith Millman (Commercial Counsel, Queensland Treasury). Mr Swinson then confirmed the contract to be used was GITC.
17. I was not involved in negotiating the contract's scope at the technical level. I did not, for example, deal with what was included in the Statements of Scope ('SoS') or Statements of Works ('SoW'), excluding those related to the establishment of IBM's Program Management Office (SoW 4), which were in substantial part negotiated by me or members of my SPO team.

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18. I was closely involved in negotiation of some of the obligations which IBM would be under as a prime contractor, as well as the formalisation of an "At Risk Pricing" scheme which IBM had proposed to give it incentive to meet time, quality & scope objectives for its deliverables under the contract. I also participated in negotiations concerning the process to convert SoS estimates into fixed price SoW.
19. Mr Burns was also involved in the contract negotiations. He did not attend all contract negotiation meetings, although this was not possible because negotiations were conducted in multiple streams.
20. The structure which was established at CorpTech comprised a Strategic Program Office ('SPO') (of which I was Director) and a Solution Design Authority ('SDA') headed by Mr Burns who was the Delivery Director and also the State's lead negotiator for the contract, plus an Operations function with Philip Hood as Director and a business support function.
21. At that time I understood that Mr Burns had had some involvement with IBM in the past although I did not consider this as a particularly remarkable point.

Work to be done under the contract

22. Statements of Scope documented the parties' understanding at that point in time (contract negotiation) of what they intend to achieve. The absence of adequate information or dependency of other work rendered Statements of Scope non-binding estimates of (principally) of scope, duration & cost.
23. Statements of Work were derived from Statements of Scope once the required information or dependencies had been identified or addressed. Statements of Work principally set out the agreed scope, how it will actually be broken down into deliverables, the timeframe for such deliverables, payment triggers and payment sums, customer resourcing and other dependencies.

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LATTICE vendor support

24. At the time of the tender, Queensland Health was operating a product called LATTICE to support the processing of its payroll. This 3rd party product was, or was very shortly to fall out of vendor support. In its proposal, IBM had identified that there was a pressing need to resolve this situation as it was considered a risky approach to await development of the Whole of Government (WoG) payroll & rostering solution because this might not be achieved before the LATTICE product became unsupported.
25. IBM proposed to address this situation by the building and implementation of an Interim Lattice Solution which it envisaged as being replaced by the eventual WoG solution

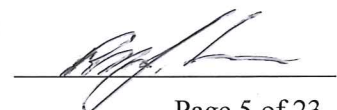
Work in the Department of Education

26. After considerable negotiation with the Department of Education Training and the Arts (DETA), a decision was made to agree to establish a separate IBM team to commence a body of work to scope and eventually deliver a solution suitable for DETA. SoW 11, to scope the required DETA work, was executed by the parties and IBM commenced work under it. There were a number of extensions sought and granted for SoW11 but IBMs progress was unsatisfactory.
27. I arranged a meeting with Mr Stan Sielaff (the officer representing DETA) to review the progress of SoW11. We arranged a joint meeting with the (then) IBM Program Manager, Mr Paul Hickey at which it was agreed that progress was unsatisfactory. We referred to IBM's SAP "Ascendant" methodology and identified the methodological stage IBM had reached and the deliverables prescribed by its methodology to complete the next stage. We advised Mr Hickey that SoW11 would be terminated and that we would authorise a replacement SoW11a under which IBM should complete the current stage and produce the deliverables prescribed by its methodology. As far as I can recall, the key deliverables included a Project Management Plan (PMP) and a Project Schedule (plus at least one other item which I cannot recall). The parties agreed a fixed timetable (I recall this as either 2 or 3 weeks) to develop these agreed deliverables.

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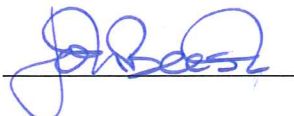


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28. IBM struggled to produce the agreed deliverables on time, presenting the PMP and a very meagre schedule late on the final date. Having reviewed these items I called in Mr Hickey and asked him whether he'd reviewed and approved of them, to which I recall he confirmed he had and did. I then asked him to explain some of the several inconsistencies and omissions and after a short time he stated he was withdrawing these deliverables.
29. Whilst IBM did eventually produce a revised PMP, at no time did IBM submit to the SPO a valid schedule of work, as was required by its own methodology and SoW11a. I was not prepared to sign-off completion of SoW11a (which would have both triggered payment of SoW11a and permitted IBM to commence the next stage of its methodology at DETA under SoW14) until all the contracted deliverables were presented and accepted. At a subsequent Executive Steering Committee meeting held at CorpTech's offices, IBM's then Program Director Mr Bill Doak pressed for authorisation to commence SoW14. Against my express recommendations that IBM be held to its contracted obligations under SoW11a, the Committee agreed to IBM's request.
30. The principal justification for setting up a body of work specifically for DETA was that its requirements were significantly different from other agencies. One item frequently cited as evidence of such unique requirements was "concurrent employment" (where an individual holds two or more different roles with the department, e.g. "teacher" and "cleaner").
31. After some time working under SoW14, IBM eventually set up a detailed presentation for CorpTech and DETA representatives given (principally) by one of its SAP business specialists. The essence of the presentation was a detailed justification why DETA should not be considered as unique. The natural consequence of this presentation was that DETA should fold back into the WoG solution, a consequence that did not appear attractive to Mr Sielaff. I do recall two (possibly more) subsequent meetings with DETA representatives, including Mr Burns who had then been engaged in an advisory role to DETA, at which it argued either/both that the product from the IBM work was of little or no use and/or that DETA would not sign off on the SoW14 deliverables.

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32. Although IBM had not produced (or in some cases, not completed) all the contracted deliverables under SoW14, it appeared to me that the Executive Committee accepted that IBM had made a compelling business case why work under SoW14, and any subsequent work at DETA, should cease.
33. I cannot remember the exact timing, but later it was decided that the DETA would continue operating with its existing implementation of a product called TSS. It is still running today.

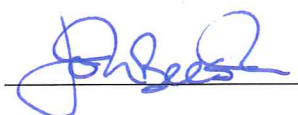
SOW 12

34. Statement of Work 12 is WorkBrain Rostering Build Requirement. There were a number of agencies that use rostering: all the emergency agencies use rostering as does Corrective Services and Queensland Health.

WorkBrain

35. The concept of utilising WorkBrain as the tool to capture Award details was presented in IBM's RFT response. IBM also cited the Disney company in the US as a SAP/WorkBrain reference site. It was agreed that IBM would, as part of SoW 5, undertake a WorkBrain Scalability Assessment the results of which would be presented for the parties' review (ref clause 5.3.)
36. I was concerned at this approach because the risk of using the SAP/Workbrain combination as proposed by IBM should rightly rest with it. The proposed "assessment" was to be funded by the State which was thus effectively paying IBM to evaluate the risk of its own proposal. Furthermore, the involvement of the State in any subsequent review of the "assessment" may have resulted in shifting the risk from IBM to become a risk shared between the State and IBM. I communicated my opinion on this matter to (at least) Ms Perrott and Mr Burns.

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37. The “assessment” was undertaken in or about the second quarter of 2008. At the relevant Executive Steering Committee meeting IBM presented its results and positive recommendation. Mr Burns, in his report as Delivery Director asserted without condition words to the effect that "we endorse IBM's findings" or "We endorse these findings". I was concerned that the meeting’s minutes would record the State’s unconditional endorsement of IBM’s assessment. At the close of the meeting I spoke with the meeting’s minute taker and asked her to ensure that these recorded the State had “acknowledged” or possibly “accepted” IBM’s findings, but not to include the word “endorse”. She indicated to me that she would do this.

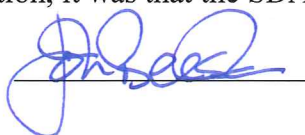
Barbara Perrott

38. Ms Perrott did not like conflict. One example of this is that I (and, I believe, others) considered the Solution Design Authority was severely dysfunctional to the point of being a practically ineffective operation. My evidence for this was the repeated inability of SDA staff to adhere to its own quality procedures, its frequent failure to meet the contracted timeframes for review and sign-off of deliverables, its frequent complaint that it had insufficient time/resources to undertake such reviews despite SPO providing it a regular calendar of scheduled deliverables, almost no involvement in the initial preparation of deliverables or their development (i.e. many in it considered the review and sign-off period as their first exposure to a deliverable) and little, if any, direct exposure to and involvement with the project teams charged with producing these deliverables.

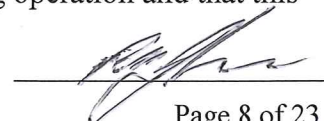
39. On at least one occasion I raised these frequent failures with Ms Perrott, suggesting that SDA resources should be co-located with the relevant project teams, charged with getting themselves directly involved in the development of such deliverables and thus much more familiar with what they would later have to review and approve.

40. Ms Perrott’s response was to suggest she facilitate a meeting between Mr Burns and me. I pointed out that the problem was not one of an issue between me and Mr Burns that required resolution, it was that the SDA was not a functioning operation and that this

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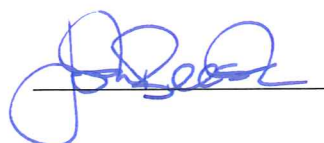
would result either in the State breaching its contracted obligations with IBM, or that deliverables would simply become deemed to approved by the passage of time, neither of which was satisfactory. I advised Ms Perrot that it was a matter on which she could chose to act or not, it was her call. Given that SDA's performance remained an ongoing matter of concern (I subsequently raised it as a formal Risk) I am not aware of any evidence of action being taken to resolve the matter.

IBM seeks my dismissal

41. IBM's Program Director, Mr Doak handed Ms Perrott a draft letter seeking to have me removed from my position. I recall that the terms Ms Perrot explained to me was that IBM would not send the letter if I was dismissed. If I would not go (or Ms Perrott would not remove me) then the letter would, apparently be sent.
42. Ms Perrott gave me a copy of the letter and asked me to draft a response to it. I was particularly irritated about that, finding it difficult to understand why she would not say to Mr Doak that, if he had some assertions about my performance to put them in writing and substantiate with evidence.
43. I am not aware that the State ever gave any formal response to IBM's letter. I recall I did draft a letter and sent the draft (perhaps in an email) to Ms Perrott. Mr Perrott subsequently advised me that Mr Mal Grierson (Director-General of the Department of Public Works) had acceded to IBM's request but that he was prepared to meet with me.
44. I met with Mr Grierson along with Ms Perrott, in Mr Grierson's departmental offices. At the meeting I said to Mr Grierson words to the effect:

I'm not going to put either of us through the indignity of pleading with you for my job. You've made your decision and I accept that. The only thing I seek from you in return is a good reference.

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45. Because I considered it wise to establish the exact status of the IBM program of works at the time of my removal I had prepared a lever-arch file containing copies of:
- a. the detailed program financial data;
 - b. audit findings on IBM's performance and adherence to its stated processes;
 - c. legal advice from Mallesons, and;
 - d. letters from both Queensland Health and DETA to CorpTech regarding IBM's performance
46. I handed this folder of documents to Mr Grierson and advised him to read it. Ms Perrott then asked me for a copy, and I handed to her a copy I'd prepared for my own records.
47. There was little in any of these documents that would give comfort to the view that IBM was performing satisfactorily and much of concern. Mr Grierson already had a reasonable idea how badly the financial situation had become because of the earlier briefing I'd given to Mr Grierson and Ms Robyn Turbitt upon the transfer of the program from Treasury to Department of Public Works ('DPW').
48. I was not dismissed. I do recall an informal conversation with, I think, Ms Perrott that Ms Turbitt had attended a meeting attended by Boyd Backhouse (DPW Legal Counsel), a junior DPW lawyer plus Malcolm Campbell and myself to discuss various contract issues. From that meeting Ms Turbitt considered that replacing me with Mr Campbell was unlikely to change the SPO's view of IBM's performance. It is fair to state that Mr Campbell and I held very similar views concerning IBM and its performance.

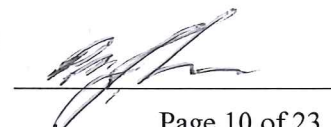
Project management methodology

49. There is a popular view amongst many involved in projects and project management, and particularly amongst those who advocate the use of BMBOK (Project Management Book of Knowledge) sponsored by the Project Management Institute (PMI) and Prince2 methodologies, is that the simple application of and adherence to a methodology will

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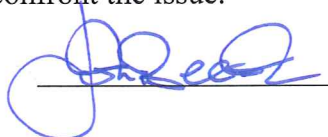
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result in a successful project outcome. In my experience, and that of many other experienced professionals in the field, this is rarely ever the case.

50. Most professionals with experience in major projects understand that that the principle cause of projects going wrong is poor governance, particularly the early decisions which purport to confirm the anticipated scope, benefits cost and timeframes and thus approve the project's commencement, and the subsequent decisions when faced with delays, scope creep, cost rises, etc. The relative ease of giving approval to a project is the inverse of the extraordinary difficulty in reaching any decision to suspend or terminate.
51. In spite of the increasing evidence of problems, I never detected any possibility that CorpTech or DPW would suspend or terminal this project. I believe that IBM was very aware that no such decision was ever likely to be taken by the State. The principal difference between the parties was that IBM always aware of its business objectives (principally the generation of revenue and contractual coverage of it costs) and pursued these with a single mindedness which the State (or its agencies) ever displayed.
52. Even if the contract had been absolutely watertight I consider it highly unlikely that, if IBM decided that it could not (or would not) deliver, the State would have acted decisively to pursue its interests and enforce its contractual entitlements. I cannot identify any evidence that the State has, or is currently capable of developing such a commercial culture.
53. For example, I have in the past been engaged to undertake an analysis for Queensland Health for a clinical informatics project planned initially to take four months. I was engaged because, after three years the project team had announced an eight-month delay. My brief was to determine wether the project was deliverable within 8 months, which I concluded in my report as entirely feasible. However I pointed out that it was most unlikely to happen because there was no consequence of failing to deliver. The lack of strong and decisive governance had resulted in a culture in which delivery has little importance. I consider the CorpTech project showed similar characteristics – poor track record of performance and delivery by IBM coupled with a governance forum unwilling to confront the issue.

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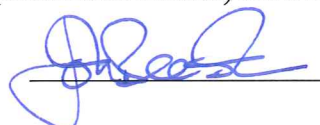
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Change Requests

54. In its RFT response IBM had proposed it deliver the LATTICE solution within six months. A variation was signed to extend the timeframe to November 2008. This was not an unreasonable extension of time.
55. As time passed it became increasingly clear that IBM was unlikely to meet this revised date.
56. A meeting was held at Mallesons to discuss that issue attended by Mr Hickey (then the IBM QHIC Project Manager), Mr Burns (representing QHealth), Mr Swinson of Mallesons, Mr Chris Bird (of my SPO team) and me.
57. IBM was seeking an extension of time and proposed to conduct a demonstration test to show that it could run the payroll within the payroll window, a matter that was central to IBM's failure to meet the November date. In our discussions with Mallesons, Mr Bird had developed the idea that, whilst CorpTech should sign the variation IBM had proposed including extension of time and varied payment terms for, inter alia, conduct of the demonstration test, this variation should be subject to a condition precedent requiring it to successfully complete the demonstration test by a specified date. CR 129 was executed by the parties including the condition precedent requiring IBM to successfully complete the test by 30 November 2008. I recall that there were at least two further variations with the same condition precedent granting IBM further extensions of time to successfully complete the test.
58. IBM was not able to comply with the condition precedent.
59. A meeting took place about three or four days before Christmas 2008 at Queensland Health. I attended as an observer. Also present were Mr Philip Hood (Acting ED, CorpTech), Mr Bob Cramp (Project Manager, CorpTech), Mr Burns (at that time working for Queensland Health) Mr Peter Douglas (a nominee, I believe, of Mr Michael

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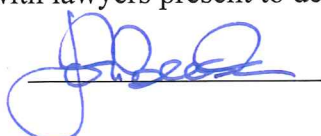


Kalimnios), a range of other people from Queensland Health and Mr Kalimnios. At the meeting, there was a roundtable discussion as to whether or not IBM had successfully completed the test.

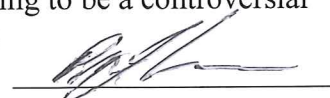
60. To the best of my recollection, the people in Queensland Health, largely, if not unanimously, agreed that IBM had met the requirements. Mr Cramp and Mr Hood asserted that they had not. Then Mr Kalimnios made a statement along the lines of, "IBM have delivered us fuck all..." After some further discussion, the meeting formally agreed that IBM had failed to complete the test, that the condition precedent had not been met and consequently IBM was now in breach of its obligation to meet the November 2008 delivery date for the QHIC solution.
61. IBM representatives (led by Mr Hickey) then joined the meeting. Mr Hood advised Mr Hickey of the meeting's decision that IBM had failed to successfully complete the test. Mr Hickey asked "What about the payments?" I explained to him that, because IBM had failed to meet the condition precedent, the variation was voided, there was no obligation on the State to pay any monies and that IBM was effectively in breach of its obligations.
62. I was then asked to go off with Mr Burns and Mr Hickey to discuss how we should go forward with this. We adjourned to a coffee shop where Mr Burns said to Mr Hickey words to the effect that "We know that you've passed," I said words to the effect that "We've just come out of a meeting where IBM has been advised it has not passed the test. That is the State's position".
63. Following that meeting, I drafted a letter which was seen and approved, and slightly strengthened by Mr Grierson. The letter was signed by Mr Hood as Acting ED of CorpTech and sent to IBM (Mr Bill Doak) just before or just after Christmas 2009. It asserted that the State believed IBM was in breach of the contract and invited them to formal negotiations at Mallesons in January.
64. I drafted this letter because I considered that IBM would not want to sit in a closed

environment with lawyers present to deal with what was proving to be a controversial

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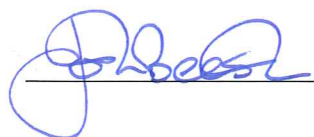
and potentially damaging matter. Like many other large vendors, I suspected IBM would prefer to hold informal conversations, preferably away from those with detailed knowledge, where they can exert a much greater level of control and influence.

65. Shortly afterwards, I took two or three weeks holiday. I was to finish work at the end of March 2010 and came back to assist my successor, Mr Malcolm Campbell, who was a member of my SPO team to take over
66. Upon my re-engagement in June 2010 I was surprised to see the change request no CR184 which effectively followed CorpTech's letter of December 2009. CR184 was signed some five or six months later and effectively asserts no blame to either party for delays and agrees certain additional payments for certain variations in scope. It was never clear to my why, in light of IBM's previous poor performance, the State had allowed some 6 months to pass before concluding (what I considered) a less-than-favourable variation .

IBM's overall approach

67. I have a lengthy background in, and considerable experience of running IT-related projects. Like most experienced project managers, I believe I can identify the signals indicating whether a project is running well or badly. In the same way as CorpTech could never get IBM to present a useful schedule for the SoW14 work it was undertaking for DETA, it proved impossible to sight a useful schedule that IBM was (or should have been) using for the work which it was undertaking for Queensland Health.
68. A very charged meeting took place at Queensland Health offices attended by Queensland Health & CorpTech officers and representatives of IBM. After considerable and sometimes heated discussion, it was agreed that Queensland Health and CorpTech would work with IBM's then QHIC Project Manager to develop a schedule.

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69. I had two schedulers working for me who attended the subsequent meeting but, in spite of an offer to IBM for my schedulers to assist it to produce a detailed, properly constructed schedule of work, only a token high-level schedule was ever produced. I continued to offer IBM access to their services, but this was not taken up.
70. I do not recall ever sighting a detailed schedule for the work which IBM was undertaking for QHIC. One of my roles was as the nominal manager for the people resources which the State had put in or CorpTech had put into various teams. I briefed those people every month or two as they worked amongst the IBM QHIC team in a different part of town. At the end of many of these sessions I would invite questions and comments. These staff would regularly report to me a lack of direction, doubling up or effort, a lack of understanding of requirement and conflicts within the QHIC team.
71. I had previously had occasion to have a conversation with Mr Hickey, who by then had moved from being the Program Director to the Project Manager for the Queensland Health exercise. I consider that he demonstrated an astonishing lack of understanding about basic project management.
72. IBM's teams appeared to be staffed largely by contractors. I believe that the majority of IBM resources working on the QHIC project were contractors.
73. IBM did not appear to have any resources with experience in implementing the proposed WorkBrain/SAP solution. They did not appear to appreciate the challenges of designing, planning, resourcing, building, testing and implementing a highly complex award structure into the WorkBrain engine. They did not appear to have access to draw on appropriate experience in dealing with an SAP/WorkBrain implementation in such an environment.

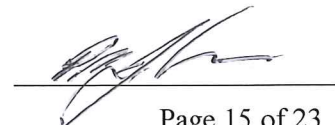
The wider arrangement

74. This project was one which, at its outset, it was impossible to know in detail all of the requirements. Consequently it commenced with a number of assumptions, including the

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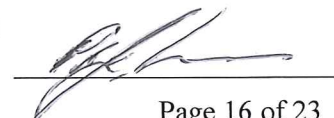
IBM's proposed Interim QHIC Solution. I am not aware that IBM's proposal for QHIC was ever subjected to thorough critical analysis.

75. It is not realistic to suggest that if the specification, the schedule or the business requirements should have been better defined before entering into the contract. Such a proposal envisages the ability of parties to fully document and commit to a future-state in terms that are unambiguous. The mere resourcing of such an exercise is beyond the capacity of most organisations.
76. It is better that the customer spend some time and effort in developing a common stakeholder understanding of the *business outcomes* it is seeking, particularly in behavioural terms (precisely who will start/stop/change from doing precisely what and start/stop/change to doing something precisely different, including those who will simply be no longer required to do anything and those who will be required to do much more). Such a confronting and challenging exercise can only be carried out at an executive level armed with a clear grasp of the organisation's strategic imperatives. It is rarely done.
77. It is inevitable there will be changes in the way things have to be done as the project evolves and participant's understanding develops.
78. It was well known both that Queensland Health would keep on changing its requirements and that different parts of Queensland Health did things in different ways. This is generally true of all large organisations, so Queensland Health's behaviour is far from unique.
79. I would generally recommend that the process which ought to be adopted is, once the executive has established a common view on desired business outcomes, then:
- a. *Firstly*, enter into a contract with one or possibly two vendors to undertake a due diligence exercise to develop an estimate of costs/resources/timeframe to

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undertake a formal scoping study (including options/alternative approaches) and prepare a detailed specification of scope;

- b. *Secondly*, engage one (or more) of these vendors to undertake the scoping study with deliverables comprising a detailed specification of scope, including assumptions, dependencies, alternatives and identified risks that is capable of being submitted to the market for responses/offers to undertake the necessary work.
- c. *Thirdly*, evaluate the responses and select preferred vendor according to evaluation criteria, one of which should be its compliance in agreeing to deliver the specified scope
- d. *Finally* engage the preferred vendor to deliver the contracted scope, recognising that changes to the desired business outcomes will result in variations in scope and thus price, schedule, etc.

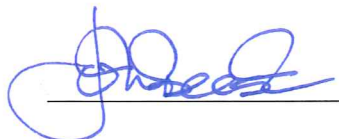
Such an approach exploits the strengths of the Prince2 methodology by commencing with an exploratory stage and moving to the subsequent stages only if the preceding stage is demonstrably successful. If not, the project should be either remediated or terminated.

- 80. Even with such an approach, it may remain difficult in medium – large projects to achieve pricing certainty. As a general rule, fixed price contracts for IS-related projects are almost always conducted against a background of ongoing disputes as to what is, and is not “in-scope”.

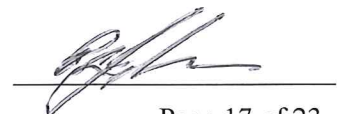
State’s management of the Contract

- 81. Both the Executive Committee and the senior officers in Treasury and, later, DPW appeared reluctant to insist upon strict compliance by IBM with its contractual obligations. IBM appeared to be able to influence decisions on the basis of claimed commercial difficulties or internal process constraints. IBM appeared often able to effectively exploit the apparent differences between Queensland Health and CorpTech and DETA and CorpTech to its advantage.

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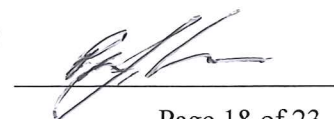


82. IBM (Mr Doak) arranged a meeting with Mr Grierson at his departmental offices, attended also by Ms Perrot, Ms Turbitt and myself. IBM's objective was to both lodge a complaint at the SPO's administration of the At-Risk process, (specifically the claim made by Mr Doak to Ms Perrot, that Deliverables had been rejected by SPO solely because of spelling, grammatical or presentational errors), and to agree to the removal of the At-risk provisions of the agreement.
83. Mr Doak tabled no details in support of his assertion other than that it had occurred, was not in the spirit of the contract terms and that it is better for all for it to be removed.
84. I had asked one of my officers, Ms Louise Chiconi, to review SPOs' records for all rejected deliveries to determine if any had been rejected solely on these limited grounds. Ms Chiconi reported to me that she could find no evidence of such a rejection, and provided me with a folder of all relevant SPO records for the meeting.
85. I had little to say at this meeting except to ask Mr Doak why he or his team had never raised such an issue with me or my officers and to challenge him to point out one such rejection in the documents I had. He was clearly prepared neither to answer my question nor to attempt to identify such an example. Neither Mr Grierson nor Ms Perrott pressed the point and I said no more.
86. Mr Grierson determined that CorpTech and IBM should work out how the matter should be resolved. A subsequent meeting was held between myself, Ms Perrot, Mr Doak and 1 or 2 other people, (whom I do not recall) to discuss the matter. I do not recall the precise terms that were agreed other than them being less favourable to the State than before.
87. This was partly a problem of culture of which I have spoken above.

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Settlement

88. On or about 28 June 2010 I was asked by the State (Mr James Brown) to return to work to assist with the handling of the dispute concerning the contract and IBM's performance under it. I stayed until 28 October 2010.
89. Shortly after my engagement in June 2010, Mr Swinson contacted me and at an informal meeting we discussed the then-current situation and he indicated that the State were entitled to, and should, pursue IBM vigorously. Whilst I advised that, in my opinion, the State lacked the fortitude to pursue such a course of action, I did not consider this informal advice as unreasonable or particularly remarkable.
90. By the time I started back at work, at least one Notice to Remedy had been delivered to IBM on 12 May 2010 and IBM had responded by letter of 19 May 2010
91. On 17 June 2010 Mallesons had provided the State with an Options Paper, which was subject to a Crown Law review of 23 June 2010. The net of this advice was that the State contemplated a choice between four options:
- Option 1: Terminate the contract with IBM
 - Option 2: Suspension of the contract
 - Option 3: Negotiation of a settlement with IBM, and;
 - Option 4: Continue with the current contract.
92. After considerable discussion including Mallesons, Crown Law and DPW Legal Counsel, I was charged with drafting a briefing for Mr Grierson setting out the case for each option and recommending Options 3 as the most practical option, but reserving the States entitlement to terminate (Option 1) if IBM was unprepared to negotiate an outcome reasonable in all the circumstances.

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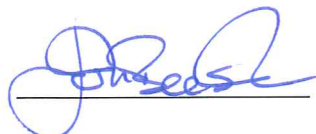


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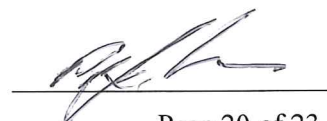


93. In discussions and legal advice it was agreed that the State's negotiation position would be advantaged if it maintained pressure on IBM, consequently my draft briefing also recommend the State issue a Notice to Show Cause, which was issued to IBM on 29 June 2010 along with a covering letter drafted by Mallesons.
94. The briefing also recommended the engagement of a professional commercial negotiator to advise on and lead the State's negotiations, a point Mr Brown and I felt was important given our experience with the State's negotiation approach thus far.
95. Subsequently Mr Jeremy Charlston, Partner at Clayton Utz was engaged to fulfil this role. To the best of my recollection, and in spite of subsequent briefings I drafted for the Associated D-G, DPW, Ms Natalie MacDonald, I believe that Mr Charlston's experience was not fully utilised nor his advice or involvement sought by those now determining the scope of the eventual settlement.
96. To the best of my knowledge, the factors which bore upon the State's decision to settle on the terms eventually agreed with IBM were:
- a. Cabinet decisions and decisions made at the executive level in the Premier and Cabinet Office and DPW at the D-G and ministerial level. I had no dealings with senior management as part of the settlement. My instructions about this were provided through the person to whom I reported, James Brown. He communicated those instructions to me from time to time. In a general sense, those instructions were less forceful than I thought the State was entitled to be in its dealings with IBM;
 - b. Whilst I appreciated that the likely outcome would be some form of settlement terms, I thought there was sufficient evidence that IBM had failed to deliver what it had promised to and that this, coupled with the realistic possibility that the State would, if necessary take action against IBM was likely to achieve terms more favourable to the State.

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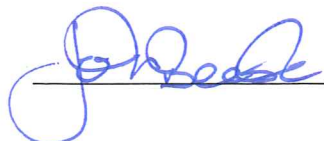


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- c. I am not aware of any barrister's opinion being formally obtained about the State's prospects in any litigation against IBM;
- d. I advocated that the State take a robust approach in its negotiations with IBM. At one stage at least I recall seeing a ministerial briefing note which had been annotated by Minister Lucas. His handwritten remarks which I saw were to the effect that the State should not take a weak approach to its negotiations with IBM;
- e. Queensland Audit Office (Report No 7 of 2010) report which was published in mid June 2010 was problematic for the settlement negotiations. The QAO does not to my knowledge have experience in large complex projects. I am not aware that it sought or engaged an expert or took expert evidence. The Queensland Health Payroll project was, by any measure, a highly complex and highly contested matter.
- f. The QAO does not have experience of nor history in the collection of parties' evidence, the determination of its admissibility and weighing of its probative value. Its report neither lays out the competing evidence nor presents argument for preferring one version over another. It is not credible to believe that the QAO was unaware of or disinterested in the actions that IBM might take should it consider the QAO's final report prejudicial to its business or reputation.
- g. The report had serious consequences for settlement. It was, in my view and that of others, a document that IBM could and would rely upon to respond to any action taken by or threatened by the State. IBM representatives did in fact advert to that report in discussions I had with them.
- h. I am not aware of any legal advice sought or considered during the course of the settlement negotiations that the QAO Report might be inadmissible in any Court proceeding concerning the contract. I do observe, however, that even

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armed with such advice, it remains probable that IBM would vigorously contest such reasoning if it considered this was to its benefit.

97. During the period that Notices were issued to IBM and settlement negotiations taking place it was difficult to determine with confidence the number and severity of the outstanding defects. The numbers with which I was provided would change, there was little evidence of clear, concise record keeping in what was both a key area of dispute between the parties and key to the successful operation of the payroll system. .
98. It was clearly understood by me and by those assisting with the settlement negotiations that the resolution of the defects identified was not sufficient to resolve entirely the problems with the system.
99. I believe that the State was aware that resolution by IBM of the agreed set of defects would still not result in the delivery of a satisfactory system (noting that legal advice to the State at that time was specifically NOT to Accept the system).
100. The issue which was to be solved was to efficiently pay Queensland Health staff. One option was the simplification of the award system although such a strategy would have involved negotiations with the relevant union bodies.
101. After a further engagement with Shared Services Queensland in 2011, I left in November 2011 holding the view that it was most unlikely the highly customised version of Workbrain could ever be upgraded to a later version without considerable risk, cost and possible disruption.
102. I voluntarily make this statement to the Commission of Inquiry. The contents of this statement are true and correct to the best of my knowledge. I acknowledge that any false or misleading statement could be an offence against the *Commissions of Inquiry Act 1950* (Qld) or contempt of the Commission.

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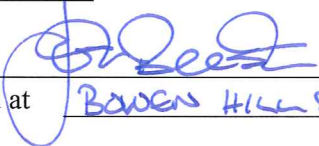


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Declaration

This written statement by me dated 8 March 2013 and contained in the pages numbered 1 to 23 is true and correct to the best of my knowledge and belief.

Signed at  Signature
BOWEN HILLS this 8 day of March 2013

Witnessed:

 Signature
Name PETER JENKINS  2013

John Beeston
signature:



Witness signature:

